

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK**

**FRANK JAMELSKY,**

**Plaintiff,**

v.

**FIRST NATIONAL COLLECTION  
BUREAU, INC.**

**Defendant.**

**Civil Action No. 12-CV-0809-A**

**COMPLAINT**

**(Jury Trial Demanded)**

1. Plaintiff alleges violation of the Fair Debt Collection Practices Act, 15 U.S.C. 1692 et seq. (“FDCPA”) and Telephone Consumer Protection Act, 47 U.S.C. 227 et seq. (“TCPA”).

**JURISDICTION AND VENUE**

2. This Court exercises jurisdiction under 15 U.S.C. 1692k, 28 U.S.C. 1331, and 28 U.S.C. 1367. This District is of proper venue as Plaintiff is a resident within and Defendants engaged in activity alleged while Plaintiff while Plaintiff so resided.

**PARTIES**

3. Plaintiff, FRANK JAMELSKY (hereinafter "Plaintiff" or "Mr. Jamelsky") is a natural person residing in Alden, New York. Defendant FIRST NATIONAL COLLECTION BUREAU, INC. (hereinafter "Defendant"), is believed to be a corporation maintaining its principle place of business at 610 Waltham Way in McCarran, Nevada.

4. Defendant regularly operates as a third-party debt collector and is a "debt collector" as defined in 15 U.S.C. 1692a.

### **FACTUAL ALLEGATIONS**

5. Defendant made collection calls to Mr. Jamelsky's cell phone in an attempt to collect a consumer debt from Regina Ria, a person Mr. Jamelsky has no knowledge of.

6. The calls Mr. Jamelsky received from Defendant were automated calls playing a pre-recorded message asking for Regina Ria to call (877)769-0760. At least 100 such pre-recorded messages were received from approximately January through September, 2011. The content of the messages received is as follows:

"Hello, this message is for Regina Ria. If you are not Regina Ria, please hang up or disconnect. If you are Regina Ria, please continue to listen to this message. There will now be a 3-second pause in this message. By continuing to listen to this message, you acknowledge that you are Regina Ria. You should not listen to this message, Regina, so that other people can hear it as it contains private information. There will now be a 3-second pause in this message to allow you to listen to this message in private. This is Mary Jones from First National Collection Buerua. This communication is from a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose. Please contact me about an important business matter at (877)769-0760. Thank you. Good bye."

7. During the time period for which Defendant called him, Mr. Jamelsky worked at night and slept during the day. Mr. Jamelsky, however, was on call during the day for his employment and shutting his phone off was simply not an option. On many occasions

Defendant's calls woke Mr. Jamelsky. Mr. Jamelsky was greatly harassed by the nature and volume of the calls.

8. Prior to August 9, 2011, Mr. Jamelsky informed Defendant on at least three separate occasions that he had no knowledge of Regina Ria and to stop calling him. Each time Mr. Jamelsky spoke with Defendant, Defendant advised Mr. Jamelsky that it would take up to 72-hours to remove his number from their auto-dialer. Each time the calls continued. The last time Mr. Jamelsky advised Defendant to stop calling was on August 29, 2011.

### **CAUSES OF ACTION**

#### **COUNT I**

9. Plaintiff re-alleges paragraphs 1 through 8, inclusive, and by this reference incorporate the same as though fully set forth herein. Plaintiff is informed and believes and herein alleges that Defendants violated 15 U.S.C. 1692b(3) with regards to Plaintiff as follows: Defendants continued to contact Plaintiff in an attempt to contact Regina Ria without Plaintiff's consent.

#### **COUNT II**

10. Plaintiff re-alleges paragraphs 1 through 8, inclusive, and by this reference incorporate the same as though fully set forth herein. Plaintiff is informed and believes and herein alleges that Defendants violated 15 U.S.C. 1692d with regards to Plaintiff as follows: Defendant's repeated automated calls to Plaintiff after Plaintiff demanded the calls be

terminated, constitute conduct the natural consequence of which was to harass Plaintiff in connection with the collection of a consumer debt.

**COUNT III**

11. Plaintiff re-alleges paragraphs 1 through 8, inclusive, and by this reference incorporate the same as though fully set forth herein. Plaintiff is informed and believes and herein alleges that Defendants violated 47 U.S.C. 227(b)(1) with regards to Plaintiff as follows: Within the last 2-years, Defendant called Plaintiff at least 100-times with the use of an automatic telephone dialing system and/or a prerecorded message without Plaintiff's consent.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays judgment against Defendant for recovery, damages for Counts I and II not being cumulative, as follows:

**COUNT I**

- 1.) For statutory damages in the amount of \$1,000 pursuant to 15 U.S.C. 1692k(2);
- 2.) For actual damages of \$2,255.00 for legal costs in responding to unlawful collection activity.
- 3.) For prejudgment interest in an amount to be proved at time of trial;
- 4.) For attorney's fees pursuant to 15 U.S.C. 1692(k)
- 5.) For the costs of this lawsuit; and
- 6.) For any other and further relief that the court considers proper.

**COUNT II**

- 1.) For statutory damages in the amount of \$1,000 pursuant to 15 U.S.C. 1692k(2);
- 2.) For actual damages of \$2,255.00 for legal costs in responding to unlawful collection activity.
- 3.) For prejudgment interest in an amount to be proved at time of trial;
- 4.) For attorney's fees pursuant to 15 U.S.C. 1692(k)
- 5.) For the costs of this lawsuit; and
- 6.) For any other and further relief that the court considers proper.

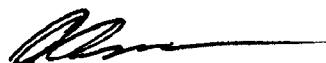
**COUNT III**

- 1.) For statutory damage in the amount of \$50,000.00 pursuant to 47 U.S.C 227(b)(3);
- 2.) For prejudgment interest in an amount to be proved at time of trial;
- 3.) For attorney's fees;
- 4.) For the costs of this lawsuit; and
- 5.) For any other and further relief that the court considers proper.

**JURY DEMAND**

Plaintiff demands a jury trial.

Date: August 24, 2012



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